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September 1, 2000

Mary Cottrell  
Secretary  
Massachusetts Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

Re: D.T.E. 98-57 Phase III

Dear Ms. Cottrell:

Enclosed for filing in the above captioned matter, please find Digital Broadband Communications, Inc.'s Reply Brief.

Should there be any questions regarding this document, please contact the undersigned.

Sincerely,

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Vincent M. Paladini

Attorneys for Digital Broadband  
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VMP/pvg  
Enclosures

cc: Cathy Carpino, Esq., Hearing Officer (2)  
Michael Isenberg, Director, Telecommunications Division  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department on its own	)	
Motion as to the propriety of the rates and	)	
Charges set forth in M.D.T.E. No. 17, filed with	)	<b>D.T.E. 98-57, Phase III</b>
The Department on May 5, 2000 by New England	)	
Telephone and Telegraph Company d/b/a	)	
Bell Atlantic – Massachusetts	)	

**REPLY BRIEF OF  
DIGITAL BROADBAND COMMUNICATIONS, INC.**

**DIGITAL BROADBAND  
COMMUNICATIONS, INC.**

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September 1, 2000

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**REPLY BRIEF OF  
DIGITAL BROADBAND COMMUNICATIONS, INC.**

Digital Broadband Communications, Inc. (“Digital Broadband”), by its attorneys, hereby replies to the Initial Brief submitted on August 18, 2000 by Verizon New England, Inc. d/b/a Verizon Massachusetts, formerly known as the New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts (“Verizon”), in the above-captioned proceeding investigating the propriety of Verizon’s proposed rates, terms and conditions for line sharing and Digital Subscriber Line (“DSL”) services, as set forth in Verizon’s Tariff No. 17 (the “Proposed Tariff”).

**I. Introduction**

In December 1999, the Federal Communications Commission (“FCC”) established the high frequency portion of the loop as a network element that incumbent local exchange carriers (“ILECs”), such as Verizon, must provide access to on an unbundled basis pursuant to Section 251(c)(3) of the Communications Act.<sup>1</sup> The FCC made clear that ILECs “should be able to

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Third Report and Order, Implementation of the Local Competition Provisions of the*

*(footnote continued to next page)*

provide line sharing within 180 days of release of this Order,” that is, by June 6, 2000. Verizon, by instituting a series of internal processes and procedures that force its competitors to wait for Verizon to perform numerous tasks, the vast majority of which are purely administrative, has effectively avoided complying with the FCC’s deadline. Now, in its Proposed Tariff, Verizon essentially asks the Department to ratify not only Verizon’s delays, but also the unsupported costs, unlawful terms, and procedural ambiguities that are integrated into the Proposed Tariff.

Verizon’s focus on process comes at great cost to competition by substantially delaying competing carriers’ ability to provide service. First, Verizon requires competitive local exchange carriers (“CLECs”) such as Digital Broadband to qualify the loop by using databases that (1) frequently malfunction and give erroneous responses,<sup>2</sup> and (2) contrary to law, are not made available to CLECs in the same time and manner that they are available to Verizon.<sup>3</sup>

Second, Verizon requires CLECs to submit applications to request augments so that CLECs can line share. As the record shows, the physical work required to provide access to line sharing is minimal and can be performed quickly.<sup>4</sup> When Verizon’s own internal procedures for processing and tracking the paperwork it has created for its own convenience are factored out, the actual physical work needed to complete the simple two-step cross connect at the main distribution frame (“MDF”) that line sharing requires takes very little time to accomplish, as

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*Telecommunications Act of 1996*, CC Docket No. 96-98, *Fourth Report and Order*, 14 FCC Rcd 20912 (1999) (“*Line Sharing Order*”).

<sup>2</sup> See Digital Broadband Response to DTE Information Request 2.

<sup>3</sup> See Initial Brief of Digital Broadband at 39-41.

<sup>4</sup> Ex. DBC-1, Direct Testimony of Terry Landers at 6-9; *see also* Hearing Transcript, p. 328, ll. 4-17 (Ms. Landers); Initial Brief of Digital Broadband at 17-19; Initial Brief of Rhythms Links Inc. at 24-32.

Verizon itself concedes.<sup>5</sup> At the hearing, Verizon never refuted the CLECs' evidence of the simplicity or the timing regarding the augment process. Rather, Verizon clung to its "worst case" scenario as the purported justification for insisting upon a blatantly anti-competitive 76 business day interval for this simple process, which scenario unreasonably assumes that all possible contingencies that could cause delay may occur with respect to every application Verizon receives. Verizon's improper motivations here are crystal clear, and the Department should impose intervals that comport with the evidence – not Verizon's self-serving desire to slow CLECs down in their effort to line share in Massachusetts.

Third, Verizon requires CLECs to submit a separate order for service provisioning, while acknowledging that the physical work involved in this stage can be performed "in a few minutes."<sup>6</sup> Verizon claims this final stage requires an additional seven business days to complete.

Finally, on top of this burdensome and anti-competitive delay, Verizon seeks to impose substantial recurring and non-recurring charges at each step in the process.

As the record before the Department shows, Verizon has failed to justify numerous key components of the Proposed Tariff. Consequently, Digital Broadband urges the Department not to permit Verizon to avoid its burden of proving that its Proposed Tariff is just and reasonable, and require Verizon to (1) make all loop qualification data, including that contained in Loop Facilities Assignment and Control System ("LFACS"), available in the same time and manner as it is available to Verizon; (2) complete its collocation augment application review and processing

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<sup>5</sup> See Initial Brief of Verizon at 16-17.

<sup>6</sup> *Id.* at 11.

within no more than 30 days; (3) complete line sharing installations pursuant to the “3-2-1 Interval” and establish intervals for orders of 10 or more loops; (4) establish interim rates for augment application fees and loop conditioning that are substantially below those proposed by Verizon; (5) eliminate unnecessary loop qualification, Operations Support Systems (“OSS”), wiring, and testing fees; and (6) conform its tariff to the FCC’s rules regarding significant degradation to one provider’s service when two carriers are line sharing.

## **II. Verizon Is Not Making Its OSS Available in a Non-Discriminatory Manner**

Verizon contends that its competitors “have adequate access to Verizon’s OSS.”<sup>7</sup> Verizon then argues that it is developing new OSS and the Department should not set any time frame for it to complete those upgrades.<sup>8</sup> Verizon ignores, however, evidence that it is not making OSS available to competitors in the manner required by law.

According to Verizon, the FCC “acknowledged that the ILEC would not be able to fully modify the OSS in time for the scheduled roll-out of line sharing.”<sup>9</sup> In fact, the FCC clearly stated that “incumbent LECs can implement suitable OSS modifications within the time frame we establish for implementation of this obligation.”<sup>10</sup> Furthermore, the FCC found that ILECs “have already modified their OSS systems to accommodate their own xDSL products, and ... those modifications and those required for line sharing are substantially similar.”<sup>11</sup> Verizon’s

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<sup>7</sup> *Id.* at 31.

<sup>8</sup> *Id.* at 31-34.

<sup>9</sup> *Id.* at 32 (citing *Line Sharing Order*, 14 FCC Rcd at 20970-73, ¶¶ 126-130).

<sup>10</sup> *Line Sharing Order*, 14 FCC Rcd at 20970, ¶ 126 and n.300.

<sup>11</sup> *Id.* at 20971, ¶ 127.

decision to upgrade numerous different OSS, and to hold competitors hostage to the timing of the completion of that upgrade, does not alter its obligation to make OSS, including loop qualification and other pre-ordering OSS, available within the timeframe established by the FCC.<sup>12</sup>

More importantly, Verizon has failed even to address one important component of its OSS: loop qualification information.<sup>13</sup> As the Pennsylvania Public Utility Commission recognized:

Real-time electronic access to loop make-up information is important for several reasons. First, such electronic access will allow CLECs to determine quickly whether a customer's loop is suitable for DSL in response to customer inquiries. Second, electronic access allows CLECs greater flexibility in structuring their workforce, because on-line systems could be used 24 hours per day to research the suitability of customer loops to support DSL. Third, electronic systems can support much greater volumes of inquiries than will manual systems. Finally, ILECs may have internal electronic pre-ordering and ordering systems available, thereby giving them an advantage in serving customers over CLECs. Time is of the essence in providing pre-ordering information, because the market for high-speed data services, in particular DSL-based services, is growing larger and more competitive every day.<sup>14</sup>

As Digital Broadband has shown, Verizon has not complied with its obligation to provide access to loop qualification information pursuant to the Communications Act,<sup>15</sup> which requires non-discriminatory access to the same information that is available to Verizon, in "substantially

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<sup>12</sup> The FCC established that ILECs should be able to implement the OSS changes necessary to provide line sharing by June 6, 2000, 180 days from release of the *Line Sharing Order*. See *id.* at 20972-73, ¶ 130.

<sup>13</sup> See Initial Brief of Digital Broadband at 38-41.

<sup>14</sup> Pennsylvania Public Utilities Commission, P-00991648, P-00991649, *Opinion and Order*, at Section VII, p. 11 (Aug. 26, 1999) ("*Pennsylvania Global Telephone Order*").

<sup>15</sup> As noted, Verizon would have the Department believe that the standard is "adequate" access, see Initial Brief of Verizon at 31. Verizon does not explain what it means by "adequate" access, but "adequate" is not the applicable legal standard in any event. See 47 C.F.R. § 51.319(f).

the same time and manner.”<sup>16</sup> Verizon’s stark refusal to allow access to the automated LFACS and other databases with information that is needed to determine whether a loop is capable of providing services Digital Broadband may offer clearly violates the Communications Act and the FCC’s rules.<sup>17</sup> Digital Broadband notes that the Pennsylvania Commission, in the decision quoted above, ordered Verizon to make available “real-time access” to LFACS and other electronic databases that contain relevant information, and specifically found that Verizon’s proposal “for giving access to loop data through a Web GUI is inadequate.”<sup>18</sup> As requested in its Initial Brief, Digital Broadband urges the Department to require Verizon to make LFACS access available immediately.<sup>19</sup>

### **III. Taken Together, Verizon’s Proposed Intervals Are Excessive and Wholly Unjustified**

The Proposed Tariff includes two separate intervals, the first a proposed 76 business day interval to “augment” existing collocation arrangements, the second a proposed 7 business day interval for the provisioning process. Moreover, it appears that Verizon will not allow the two

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<sup>16</sup> *Line Sharing Order*, 14 FCC Rcd at 20986, ¶ 172.

<sup>17</sup> Digital Broadband strongly disagrees with Verizon’s paternalistic assertion, *see* Initial Brief of Verizon at 48, that “the principal loop qualification information that is available from the [loop qualification] database and would be of interest to CLECs is the total metallic loop length....” In fact, as Verizon has stated, *see* Direct Testimony of Bruce F. Meacham at pp. 18-20, LFACS contains other information that is useful in determining whether certain services may be provided.

<sup>18</sup> *Pennsylvania Global Telephone Order* at Section VII, p. 10. Digital Broadband has presented evidence in this proceeding demonstrating that Verizon’s web-based graphic user interface (“GUI”) in Massachusetts also is inadequate. *See* Ex. DTE-DBC 2; Hearing Transcript (Ms. Landers), p. 124, ll. 1-8.

<sup>19</sup> In its Initial Brief, Verizon addresses the issue of LFACS access only in the context of its proposed recurring charges for OSS access. *See* Initial Brief of Verizon at 47-50. Verizon urges the Department to adopt its position that “whatever is established in New York for access to LFACS would apply equally in Massachusetts.” *Id.* at 49. Verizon does not explain why, if it believes the Department should

*(footnote continued to next page)*

intervals to be concurrent.<sup>20</sup> Thus, Verizon seeks to impose a four-month delay for completing work that, in many instances – particularly in “Option A” line sharing arrangements – can be completed in a fraction of that time. Neither the record nor Verizon’s Brief supports this blatantly anti-competitive proposal.

**A. The 76 Business Day Interval Does Not Take Into Account Differences in the Work Ordered by a CLEC**

Verizon’s arguments for a 76 business day “augment” interval are based largely on its assertion that the same activities “consume the majority of the required time to complete a collocation job, whether it is new or an augment.”<sup>21</sup> Verizon’s claim is not plausible. An “augment” for line sharing under an Option A arrangement (one of two splitter arrangements Verizon offers in the Proposed Tariff, and which Digital Broadband will implement) does not involve the same complex space planning and construction involved in an initial physical collocation.<sup>22</sup> This is especially the case when – as Verizon admits will occur<sup>23</sup> – existing cables can be used.<sup>24</sup>

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look to another state on this issue, that state should not be Pennsylvania, which has ordered LFACS access.

<sup>20</sup> See Proposed Tariff 17, Part A, Section 3.2.2.A.1.b, p. 4.

<sup>21</sup> Initial Brief of Verizon at 14.

<sup>22</sup> See Initial Brief of Digital Broadband at 18; Initial Brief of Rhythms at 26.

<sup>23</sup> Hearing Transcript (Ms. Stern), p. 341, ll. 20-22; Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, p. 55, ll. 14-21; see also Proposed Tariff, Part E, Section 2.5.1, p.23.

<sup>24</sup> Ex. DBC-1, Direct Testimony of Terry Landers, p. 6, ll. 13-17. See, e.g., Digital Broadband Responses to BA-MA’s Information Requests 1, 2, 7 and 20.

Verizon argues that the Department should not set an interval that is shorter than any interval that has been adopted by another state.<sup>25</sup> A review of the decisions cited by Verizon demonstrates that Verizon's reliance on the decisions of other states (including states where it is not the BOC) is misplaced.

Evidence from the New York proceedings cited by Verizon is not persuasive. Verizon chose to seek to enter the New York interLATA market first. Verizon's business decision to proceed in that manner does not dictate that standards established in New York – which were created based on limited experience – are or should be the ceiling for establishing standards in subsequent states in which Verizon seeks to garner interLATA authority. In fact, the opposite should be true. The time periods Verizon refers to<sup>26</sup> occurred almost entirely before Verizon's line sharing obligations took effect, and Verizon's performance should only have improved as a result of its experience in New York.

Although Verizon asserts that the Texas decision supports its argument, it acknowledges, as it must, that the Texas Commission established an interval of “no more than 30 calendar days” for provisioning tie cables.<sup>27</sup> Verizon then asserts – relying solely on a tariff that is not in evidence here (and about which the Texas Commission was silent) – that a much longer interval is permitted for splitter installation.<sup>28</sup> Verizon ignores the fact that when the CLEC owns and

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<sup>25</sup> See Initial Brief of Verizon at 15-18 (citing decisions in New York, Texas, California, Illinois, and Pennsylvania).

<sup>26</sup> *Id.* at 16.

<sup>27</sup> *Id.* at 16-17, n.13.

<sup>28</sup> *Id.* at 16-17.

installs the splitter, as Digital Broadband will,<sup>29</sup> there is no need for a 76 business day interval. As a result, Verizon is flatly wrong in its assertion that “the Texas decision thus supports Verizon-MA’s position,” and not the CLECs’.

Verizon next claims that the *California Arbitration Decision* is “on point.”<sup>30</sup> In fact, the basis for the California Commission’s rejection of a 30-day interval is not at all clear, and should not be relied on. The California Commission merely rejected “different intervals for different pieces of equipment.” The issue of adopting different intervals for different equipment is not even before the Department in this proceeding, and no party is suggesting here that it should be. Rather, the issue here is the total interval, and whether it is justified in light of the actual work performed.

Based on the limited excerpt of the Illinois decision quoted by Verizon, the Illinois Commission apparently believed that a different interval for line sharing arrangements would favor certain CLECs over others.<sup>31</sup> The Briefs of Digital Broadband and others on this issue squarely address and debunk the “discrimination” myth propounded by Verizon and other BOCs.<sup>32</sup> In any event, other states (Texas, Pennsylvania) have determined that different intervals

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<sup>29</sup> Ex. DBC-1, Direct Testimony of Terry Landers, p. 6, ll. 13-17.

<sup>30</sup> Initial Brief of Verizon at 17.

<sup>31</sup> *See id.*

<sup>32</sup> *See, e.g.*, Initial Brief of Digital Broadband at 20-21; Initial Brief of Rhythms at 29-30; Initial Brief of Covad Communications Company at 9-10.

for arguments are appropriate, and Verizon's transparent attempt to have the Department follow the only state decision favorable to Verizon must be rejected.<sup>33</sup>

Finally, the Pennsylvania Commission, in overruling the Arbitrator's conclusion that a 30-day interval was appropriate, apparently did not expressly consider whether a shorter interval is appropriate when no splitter installation is required.<sup>34</sup>

The evidence that was considered by other state commissions is not before the Department, and the Department therefore should not ascribe any particular weight to the other states' decisions. Verizon's reliance on other state proceedings must be seen for what it is: an attempt to avoid justifying its Proposed Tariff in Massachusetts.

Significantly, in another forum Verizon itself recently asserted that the purported complexity of "the different network configurations, operations systems and processes, methods and procedures, and local performance requirements facing different incumbents in different jurisdictions" justifies each state setting its own standards rather than a "one size fits all" approach.<sup>35</sup> Before the Department, however, Verizon takes a different approach, arguing that the Department should follow other states. Verizon's "lowest common denominator" approach should be rejected in favor of a best practices result.

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<sup>33</sup> See Initial Brief of the Attorney General at 7.

<sup>34</sup> See Pennsylvania Public Utilities Commission, A-310696F0002, A-310698F0002, *Opinion and Order*, at 26-26. (Aug. 17, 2000).

<sup>35</sup> Comments of Bell Atlantic, CC Docket No. 98-147, CC Docket No. 96-98, CC Docket No. 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), responding to the FCC's *Public Notice*, "Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning," DA 00-1141 (rel. May 24, 2000).

As far as the record before the DTE is concerned, Verizon cites its own vague and self-serving testimony and states in conclusory fashion that it has “explained in detail” that the work required for an augment includes “surveying for space, planning the routing of cable, ordering cable and equipment, coordinating with Verizon-MA’s Central Office Equipment Installers to perform the work, and coordinating with other work to be performed in a given central office.”<sup>36</sup> The record does not support Verizon’s conclusory assertions and Verizon conveniently ignores the contrary evidence.

In sum, Verizon acknowledges that there are differences between new collocation and augments and different types of augments. Nonetheless, Verizon refuses to propose a different work interval. Verizon’s position is unreasonable, and should be rejected. As set forth in Digital Broadband’s Initial Brief, the Department should establish a 15-calendar day interval for certain Option A arrangements and a 30-calendar day interval for other line sharing arrangements.

**B. The “0-6 Day” Interval Similarly Fails to Account for Different Circumstances**

Verizon’s purported justification in support of its proposed 7 business day provisioning interval is equally without any merit. As an initial matter, Verizon’s interpretation of applicable law is incorrect. There is no legal bar to the Department requiring Verizon to conform to an “accurate” standard.

Verizon asserts that “the FCC’s *Line Sharing Order* itself made clear that the most appropriate line sharing interval to apply at the outset is the interval applicable to the ILEC’s standard DSL loop provisioning.... Use of that interval ensures that the parity standard required

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<sup>36</sup>

Initial Brief of Verizon at 14-15 (citing Ex. VZ-MA 4, at 22) [sic].

by the Act is met.”<sup>37</sup> In fact, nowhere did the FCC establish a standard of “parity” between line sharing provisioning intervals and standard DSL loop provisioning intervals. Rather, the FCC noted that “there are currently no state-required provisioning intervals for the high frequency portion of the loop network element,” and that DSL loop provisioning intervals were at that time “the most accurate analogue.”<sup>38</sup> The FCC did not say that the intervals must be at “parity” with one another, as Verizon asserts, but instead encouraged states to adopt “*more accurate* provisioning standards.”<sup>39</sup> Moreover, the FCC cited favorably the Texas Commission’s adoption of a 3 *business day* standard for orders of 1-10 loops.<sup>40</sup>

With respect to Verizon’s purported factual basis for a 7 business day interval, its Brief merely offers the same litany of “what ifs” that were contained in its Rebuttal Panel Testimony, which the CLEC panel effectively demonstrated constituted a “kitchen sink” of contingencies

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<sup>37</sup> *Id.* at 7. Verizon repeats this error throughout its Brief. *See id.* at 8 (“[T]he *Line Sharing Order* contemplates and expects parity of provisioning line sharing based on the time a standard DSL UNE Loop service is provisioned today.”). Similarly, Verizon’s citation to paragraph 107 of the *Line Sharing Order* (Verizon Brief at 8) actually refers to the FCC’s discussion of parity for access and provisioning of OSS. *See also id.* at 11 (“[T]he FCC ... conclud[ed] that a parity standard with an ILEC’s provisioning of xDSL loops is the most accurate standard to initially apply.”). *Line Sharing Order*, 14 FCC Rcd at 20986-87, ¶¶ 173-74.” The Department must reject Verizon’s attempt to rewrite the FCC’s *Line Sharing Order*. The FCC’s clear avoidance of the word “parity” must be presumed to be deliberate.

<sup>38</sup> *Line Sharing Order*, 14 FCC Rcd at 20987, ¶ 174.

<sup>39</sup> *Id.* at 20987, ¶ 175 (emphasis added). Verizon also quotes the FCC’s statement that ILECs should “fulfill requests for line sharing within the same interval the incumbent provisions xDSL to its own retail or wholesale customers....” Initial Brief of Verizon, at 7 (quoting *Line Sharing Order*, 14 FCC Rcd at 20986-87, ¶ 173). “Within” the same interval does not mean, as Verizon asserts, “equal to” the same interval. As noted, the FCC encouraged states to take a hard look at the evidence and establish accurate intervals.

<sup>40</sup> *Line Sharing Order*, 14 FCC Rcd at 20987, ¶ 174. The FCC noted that the Texas Commission also approved intervals of 7 business days for orders of 11-20 loop and 10 business days for orders of more than 20 loops. *See id.* As Digital Broadband discussed in its Initial Brief, Verizon’s proposal of “negotiated” intervals for orders of more than 9 loops, should be rejected, and clear intervals should be established. *See Proposed Tariff Part A, Section 3.2.10.A.2, p.11.*

unlikely to occur.<sup>41</sup> For example, Verizon states that “[e]ven though it would appear that an ‘outside’ plant dispatch would not be required, the percentage of these orders that will require a dispatch is not known until further experience is gained,”<sup>42</sup> and that “mistakes can arise.”<sup>43</sup> This testimony only highlights Verizon’s inefficiencies. It does not justify the proposed interval.

Finally, Verizon ignores record evidence that rebuts its contention that “CLECs ignore the fact that they too are responsible for completing certain activities during the provisioning interval, and plan accordingly.”<sup>44</sup> Digital Broadband explained precisely what planning it has done, and what it will do during the proposed 7 business day interval.<sup>45</sup> Consequently, the Department should adopt the “3-2-1 Interval” that has been proposed in this proceeding.<sup>46</sup>

#### **IV. Verizon’s “Evidence” in Support of Its Proposed Rates Raises More Questions than Verizon Has Answered**

In its Initial Brief, Verizon attempts to justify its proposed charges for loop qualification, the collocation augment application, loop conditioning, and wideband testing. Each of these has been addressed at length in the Initial Briefs of Digital Broadband, Covad, and Rhythms, and the extensive arguments regarding the extent to which Verizon’s proposed fees are excessive,

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<sup>41</sup> Compare Initial Brief of Verizon at 9-11 with Ex. VZ-MA-4, Panel Rebuttal Testimony, p. 9, l. 7 -- p. 12, l. 22.

<sup>42</sup> Initial Brief of Verizon at 9.

<sup>43</sup> *Id.* at 10.

<sup>44</sup> *Id.* at 12.

<sup>45</sup> Ex. DTE-DBC-1, Digital Broadband Response to D.T.E. RR #1.

<sup>46</sup> As explained in Digital Broadband’s Initial Brief, at 24-25, the Department also should require Verizon either to eliminate the nine-loop limit or to establish a substantially higher limit.

unnecessary, or both,<sup>47</sup> need not be repeated here. Several statements of Verizon that purport to justify these proposed rates, however, warrant a brief response.

First, with respect to loop qualification charges, Verizon has failed to respond to Digital Broadband's demonstration that a recurring charge for loop qualification information is merely a means for Verizon to collect recurring charges for use of the local loop<sup>48</sup> (which it has stated it will not impose at this time).<sup>49</sup> As stated in Digital Broadband's unrebutted testimony, such charges are unnecessary because Verizon already collects access charges for the loop that fully fund the costs associated with providing that loop, including database costs, and because there is no need for a CLEC (assuming the database provides an accurate response) to seek to qualify a particular loop on more than one occasion.<sup>50</sup> No recurring loop qualification charge should be permitted.

Second, Verizon states that "[a] CLEC may request manual loop qualification to obtain more detailed information than is available from the LFACS database." In fact, Verizon uses LFACS to process a CLEC's request for manual loop qualification, as it has acknowledged.<sup>51</sup> Thus, Verizon seeks to charge CLECs a second time (first for mechanized qualification, then for manual qualification) to obtain loop qualification information that should have been available to

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<sup>47</sup> Initial Brief of Digital Broadband at 25-38; Initial Brief of Rhythms at 49-105; Initial Brief of Covad at 20-12, 26-30.

<sup>48</sup> Initial Brief of Digital Broadband at 28.

<sup>49</sup> Direct Testimony of Amy Stern, p. 10, ll. 5-7, and n.7.

<sup>50</sup> Initial Brief of Digital Broadband at 28; *see also* Direct Testimony of Terry Landers at 14-15.

<sup>51</sup> *See* Initial Brief of Digital Broadband at 28-29; Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham at 18-20.

CLECs in the first instance via a mechanized process. Such “double dipping” should be prohibited; the Department should prohibit Verizon from imposing any charge for “manual” qualification when any part of the “manual” qualification procedure utilizes databases, such as LFACS, containing information that Verizon refuses to make directly available to CLECs.

Third, Verizon’s lengthy attempted explanation for its proposed recurring charge for wideband testing access<sup>52</sup> fails to serve its intended purpose. In the end, Verizon does not show that CLEC testing equipment cannot and will not accomplish the same goals as Verizon’s equipment, yet at less cost and greater efficiency to *all parties*, not just Verizon. For example, Verizon claims that “without this enhanced capability, Verizon-Massachusetts (and CLECs) would incur increased costs and dispatches as the volume of this type of service arrangement increases.”<sup>53</sup> However, nowhere does Verizon acknowledge the obvious reason why CLECs refuse to pay the proposed charge: CLECs themselves have the same incentive to avoid unnecessary dispatches and service calls, and therefore, like Digital Broadband, have taken and will take their own measures to reduce such occurrences.<sup>54</sup> While Verizon claims that unless testing functionality is in place, “lower service quality levels” will result,<sup>55</sup> Verizon has ignored the fact that alternative testing functionality will be present, and it has not even attempted to rebut evidence that such alternative testing is sufficient to address service quality issues.<sup>56</sup> Any

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<sup>52</sup> Initial Brief of Verizon at 60-67.

<sup>53</sup> *Id.* at 60.

<sup>54</sup> Initial Brief of Digital Broadband at 36-37; Initial Brief of Covad at 21-22.

<sup>55</sup> Initial Brief of Verizon at 65.

<sup>56</sup> *See, e.g., id.* at 60-67.

wideband testing charge should be imposed only if a CLEC elects to have Verizon perform this function, but should not be mandatory.

Fourth, Verizon attempts to justify its exorbitant proposed \$1,500 collocation augment application fee by citing to a filing in the New York proceeding in which Verizon listed the steps it takes during the 76-business day collocation interval.<sup>57</sup> Again citing proceedings in New York, Verizon states that “CLECs are fully aware of the scope of magnitude of the work required.”<sup>58</sup> However, not until August 29, 2000, when Verizon filed its response to Covad Record Request 6, did Verizon explicitly state what actions it believes are necessary. Consequently, neither the Department, which is relying on Verizon to justify its Proposed Tariff in Massachusetts, nor any CLEC operating in the Commonwealth, could fully explore on the record Verizon’s purported basis either for the proposed interval or related charges. Moreover, Verizon’s response is contradictory, stating both that “[a]ll requests for physical collocation, whether such request is for a new collocation arrangement or an augment to an existing collocation arrangement, are tracked using the same major milestones,” *and* that “[t]imeframes for completion ... may vary [and] depend upon individual circumstances.”<sup>59</sup> All of the listed items do not and cannot apply to line sharing “augments”; nonetheless, Verizon has made no attempt to specify which steps in fact apply, and thus may be appropriately considered in any study of applicable, reasonable

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<sup>57</sup> *Id.* at 67-68.

<sup>58</sup> *Id.* at 68.

<sup>59</sup> Verizon response to Covad Record Request 6, filed August 29, 2000.

charges.<sup>60</sup> Consequently, the Department should set an interim rate of \$750 for physical collocation augments related to line sharing, and should require Verizon to conduct a cost-based study supporting any proposed charge.<sup>61</sup>

The penalty for Verizon's failure to prove that its charges are just and reasonable must fall solely on Verizon, and not on those parties upon whom Verizon seeks to impose the charges. Consequently, the Department should require Verizon to conform its proposed rates with the recommendations set forth in Digital Broadband's Initial Brief.

## **V. Conclusion**

Verizon has not submitted sufficient evidence regarding its proposed rates, terms, and conditions for provisioning xDSL and line sharing to carry its burden of proof. Consequently, Digital Broadband respectfully requests the Department to order Verizon to conform its Tariff to

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<sup>60</sup> For example, the items listed for business days 1 through 10, while applicable to initial physical collocation requests, should not apply to augments to existing space, as Digital Broadband explained in its Initial Brief. Moreover, virtually every single step listed by Verizon in its response to Covad Record Request 6 describes internal Verizon processes and simple communications between Verizon systems and personnel, and not actual work performed. Not until business day 14 does Verizon "perform preliminary engineering," not until business day 28 does Verizon issue a request for quote to vendors, and not until business day 53 does installation begin.

<sup>61</sup> Digital Broadband's Initial Brief states that Verizon's proposed \$1,500 fee "for processing an order to 'augment' an Option A line sharing arrangement cannot be unjustified." Initial Brief, p. 31, line 9. Of course, the last word of the sentence should be "justified," and Digital Broadband hereby corrects the error.

the rates, terms, and conditions in accordance with the Recommended Decisions set forth in Digital Broadband's Initial Brief.

Respectfully submitted,

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September 1, 2000

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to )  
the propriety of the rates and changes set forth in the )  
following tariffs: M.D.T.E. Nos. 14 and 17, filed with )  
the Department on August 27, to become effective) )  
September 27, 1999, by new England Telephone and )  
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